

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

_____)	
DUSTIN ERWIN,)	
)	
Plaintiff)	
)	
v.)	C.A. No. 1:11 CV 11328
)	
CHRISTOPHER MCDERMOTT,)	
DARVIN ANDERSON,)	
THE CITY OF BROCKTON, and)	
FOXY LADY, INC.,)	
)	
Defendants)	
_____)	

**AFFIDAVIT OF ATTORNEY MICHAEL R. HARRIMAN
IN RESPONSE TO DEFENDANT, FOXY LADY, INC.'S
MOTION FOR SUMMARY JUDGMENT**

I, Michael Harriman, being duly sworn, do hereby depose and state:

1. I am an attorney licensed to practice law in the Commonwealth of Massachusetts. I am also a member of the law firm of Sinsheimer & Associates, 92 State Street, 9th Floor, Boston, Massachusetts.
2. This firm, Sinsheimer & Associates, represents the Plaintiff in the above captioned matter.
3. On January 18, 2012, Defendant Foxy Lady, Inc. filed a Motion for Summary Judgment with an accompanying Affidavit signed by Mr. Tsoumas, the President of an inactive but not dissolved Massachusetts corporation known as Foxy Lady, Inc.

4. In short, Defendant “Foxy Lady, Inc.” argues that it does not own or operate “The Foxy Lady” in Brockton, Massachusetts and, as such, is not a properly named party in the above captioned matter.
5. On January 27, 2012, upon receipt of the above referenced documents I took several steps seeking indicia of ownership for “The Foxy Lady” in Brockton, Massachusetts.
6. That “The Foxy Lady” operates at 265 N. Pearl Street in Brockton, Massachusetts is not a matter presently up for debate. It lists this address on its own website and is similarly listed in the Yellow Pages at this address.
7. A search of the City of Brockton’s Assessor’s Database indicates that “Frank’s of Plymouth, Inc.” is the corporate entity which owns the property in which “The Foxy Lady” operates at 265 N. Pearl Street in Brockton, Massachusetts. [Deed Book: 07976, Deed Page: 00185, Deed Date: 1987/09/02]
8. A search of the Massachusetts Secretary of State’s Corporate Database indicates that “Frank’s of Plymouth, Inc.” is a corporate entity which describes the business of its corporation as “real estate rentals.” Frank E. Caswell is the President of “Frank’s of Plymouth, Inc.”
9. Additional searching of the Massachusetts Secretary of State’s Corporate Database indicates that Frank E. Caswell also operates at least two additional corporate entities at 265 N. Pearl Street and is President of both.
10. “Frank’s of Brockton, Inc.” is one of these corporate entities, and it describes the business of its corporation as “restaurant and nightclub.”
11. On information and belief, “Frank’s Restaurant” and “The Foxy Lady” share physical space within the same building at 265 N. Pearl Street.

12. A phone inquiry to the Massachusetts Alcoholic Beverage Control Commission confirms that there is one liquor license issued at 265 N. Pearl Street in Brockton, Massachusetts. This inquiry also confirms that there is not a liquor license issued in the name of “The Foxy Lady” at this address. The liquor license in existence at 265 N. Pearl Street in Brockton, Massachusetts is issued to the corporate entity known as “Frank’s of Brockton, Inc.” discussed above.
13. “Frank’s Restaurant” at 265 N. Pearl Street in Brockton, MA has confirmed that they do not sell liquor or beer.
14. Following these inquiries and the conversations which resulted therefrom, I infer that “Frank’s of Brockton, Inc.” has a large role in the operation and ownership of “The Foxy Lady.” I cannot, however, decipher with absolute clarity that “Frank’s of Brockton, Inc.” is the sole corporate entity involved in owning and operating “The Foxy Lady” at 265 N. Pearl Street.
15. I base this affidavit upon my personal knowledge and belief as gleaned from review of the City of Brockton’s records, the Secretary of State’s Corporate Database, inquiry made directly to the Massachusetts Alcoholic Beverage Control Commission, and the due diligence described above.

SIGNED THIS 27th DAY OF JANUARY 2012 UNDER THE PAINS AND PENALTIES OF PERJURY.

/s/ Michael R. Harriman

Michael R. Harriman

Certificate of Service

I hereby certify that this document filed through the ECF System will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on January 27, 2012.

/s/ Robert S. Sinsheimer